IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6112 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE H.H.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

M/S. SPARKEM & ANOTHER

Versus

GUJARAT POLLUTION CONTROL BOARD & OTHERS

Appearance:

MR MIHIR H JOSHI for Petitioner No. 1-2

..... for Respondent No. 1-2

MR MAULIN R RAVAL for Respondent No. 3

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE H.H.MEHTA

Date of decision: 08/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

Rule.

Mr.H.J. Trivedi, learned Counsel waives service of notice of rule on behalf of the respondents. Having regard to the facts and circumstances of the case and in view of the joint request made by learned Counsel for the parties, the petition is taken up for final disposal today.

2. By means of filing this petition under Article 226 of the Constitution, the petitioner has prayed to issue a writ of mandamus or any other appropriate writ, order or direction to quash and set aside the order dated May 29, 2000 issued by the Respondent No.1 under the Water (Prevention and control of Pollution) Act, 1974 rejecting the application for consent made by the petitioner. The petitioner has further prayed to quash and set aside the order dated June 26, 2001 issuing directions under Section 33A of the said Act and also to direct the respondent Nos.2 and 3 to restore the supply of water and electricity to the petitioner. Lastly, the petitioner has prayed to direct the respondent No.2 to consider and grant the application for consent made by the petitioner under the Air (Prevention and Control of Pollution) Act, 1981 as also the application for consent made by the petitioner under the provisions of the Water (Prevention and Control of Pollution) Act, 1974 without being influenced by the directions issued by the High Court on October 21, 1999 in Special Civil Application No.4473 of 1997.

3. The petitioner No.1 is a partnership firm of which the petitioner No.2 is a partner. In the year 1996, the petitioner proposed to manufacture Pigment Beta Blue. The petitioner, therefore, applied for consent under the provisions of the Water (Prevention and Control of Pollution) Act, 1974 ('the Water Act' for short). The said application was neither rejected nor granted and, therefore, in terms of the provisions of the Water Act, it was deemed that consent applied for was granted to the petitioner. However, deemed consent was revoked by respondent No.1 vide order dated April 30, 1997 and certain conditions were imposed for the discharge of trade effluent. The petitioner, therefore, reapplied for consent on May 21, 1997 but the respondent No.1 rejected the said application, inter alia, on the ground that the effluent treatment plant could not be tested since it was in an idle condition. The petitioner, therefore, reapplied for consent on January 15, 2000. Pursuant to the said application, the respondent No.1 collected a sample from the final outlet of the effluent treatment plant which indicated that the effluent plant was substantially within the parameters prescribed by the

respondent No.1. However, the application was rejected on the ground that the petitioner had changed the product without prior permission of the respondent No.1, vide order dated May 29, 2000. Thereafter, the respondent No.1 issued directions under Section 33A of the Water Act on May 4, 2000 but it was not acted upon.

4. On June 26, 2001, the respondent No.1 issued directions under Section 33A of the Water Act asking the petitioner to stop manufacturing the production of Beta Blue and to close operations of the industrial plant, inter alia, on the ground that the application for obtaining the consent had been refused by the Respondent No.1 and that the manufacturing of the said product by the petitioner was in violation of the directions of the High Court dated October 21, 1999 given in Special Civil Application No.4473 of 1997. In the meantime, the petitioner had been granted consent under the Air (Prevention and Control of Pollution) Act, 1981 ("the Air Act" for short) on April 23, 1996. The petitioner was also granted authorization for handling waste generated from the effluent treatment plant by the order dated July 24, 1998. The petitioner had also become a member of the Bharuch Eco-aqua Infrastructure Ltd. and the Bharuch Enviro-Infrastructure Ltd. In view of these circumstances, the petitioner had replied to the order dated June 26, 2001 on July, 16, 2001 setting out the relevant facts and requested the respondent No.1 to permit the petitioner to restart its production activities.

5. The petitioner has again applied for consent under the Water Act on July 17, 2001 but the respondent No.1 has not permitted the petitioner to restart its manufacturing activities. The petitioner has claimed that there is no change in manufacture of product and the application submitted for consent is likely to be rejected by the respondent No.1 relying upon the directions of the High Court issued on October 21, 1999 in Special Civil Application No.4473 of 1997. According the petitioner, the directions issued under Section 33A of the Water Act are also bad in law and could not have been issued pursuant to the directions of the High Court in Special Civil Application No.4473 of 1997. Under the circumstances, the petitioner has filed the present petition and claimed reliefs to which reference is made earlier.

6. On service of notice Mr.R.G.Shah, Environmental Engineer of Gujarat Pollution Control Board has filed reply affidavit stating inter alia that the petitioner is

an industry with new discharge and, therefore, governed by the directions of High Court which were issued in Special Civil Application No.4473 of 1997. What is claimed in the reply affidavit is that the petitioner unit has failed to obtain consent under the provisions of the Water Act and, therefore, the petition is liable to be dismissed.

7. We have heard learned Counsel for the parties and taken into consideration the documents forming part of the petition. It is evident that the petitioner No.1 has not changed the product which was being manufactured by it earlier because deemed consent under the provisions of the Water Act was granted for manufacture of Pigment Beta Blue. From the notice dated April 30, 1997, it is manifest that the product, namely, Pigment Beta Blue was being manufacturing by the petitioner No.1 and that there is no change in product which is being manufactured by the petitioner No.1.

8. Similarly, the record indicates that consent under the provisions of Air Act was also granted to the petitioner and, therefore, we are of the opinion that the respondents were not justified in rejecting the consent application submitted by the petitioner on the ground that earlier consent was not obtained by the petitioner or that there is change in product without prior permission of the Board which is being manufactured by the petitioner No.1.

9. In view of these conclusions, we are of the opinion that the order dated May 29, 2000 rejecting consent under the provision of the Water Act is liable to be set aside and quashed. Further on the basis of rejection of the application for consent, as also on the ground that the manufacturing undertaken by the petitioner No.1 is contrary to the directions issued by the High Court on October 21, 1999 in Special Civil Application No.4473 of 1997 the Board has issued directions under Section 33A of the Water Act. We find that the petitioner No.1 is an existing unit and, therefore, directions issued by the High Court in Special Civil Application No.4473 of 1997 would not apply to the petitioner No.1. The Board was not justified in issuing directions under Section 33A of the Water Act on the ground that consent was not obtained by the petitioner and that the case of the petitioner Unit is covered by directions of the High Court in Special Civil Application No.4473 of 1997, therefore, directions issued under Section 33A of the Act are also liable to be set aside and quashed.

10. For the foregoing reasons the petition partly succeeds. The order dated May 29, 2000 rejecting consent under Water Act which is produced at Annexure 'D' to the petition is hereby set aside and quashed. Similarly, directions under Section 33A of the Water Act which are produced at Annexure 'F' to the petition are also hereby set aside and quashed. The respondent - Board is directed to consider the application submitted by the petitioner for consent under the Water Act on merits and in accordance with law without being influenced by the directions issued by the High Court on October 21, 1999 in Special Civil Application No.4473 of 1997. It is clarified that the petitioner would be at liberty to carry on manufacturing activity subject to the conditions stipulated in the notice dated April 30, 1997 which is produced at Annexure 'B' to the petition. The respondent Nos.2 and 3 are directed to restore the supply of water and electricity to the petitioner as early as possible.

Rule is made absolute accordingly. No order as to costs.

(J.M.Panchal, J)

(H.H.Mehta, J)

'Bhavesh'